THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.34985 of 1997

DATE:25-04-2007

Between :

D.Hanumantha Rao (Died) and 5 others.

… Petitioners

And

Commissioner of Endowments,
Government of A.P., Hyderabad, and 2 others.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.34985 of 1997

ORAL ORDER:

This writ petition is filed seeking a *mandamus* declaring the action of the respondents in issuing the notification dated 14-12-1997 inviting tenders for lease of shops in the land belonging to Yedavallivari Choultry in Kothapet Division, Guntur District as arbitrary and illegal.

The petitioners claim to be the legal heirs of late D.Satyanarayana Murthy, who was granted lease in respect of 6992 square yards of land in Kothapet, Guntur District belonging to Yedavalli Venkaiahgari Choultry trust.

It is stated that certain disputes with regard to management and functioning of various properties belonging to the said choultry resulted in filing of O.S.No.7 of 1967 in the Court of the District Judge, Guntur and pending the said suit, a receiver was appointed by the Court to manage and safeguard the properties of the choultry. The said receiver entered into two lease agreements dated 15-06-1969 and 07-06-1990 with late D.Satyanarayana Murthy, the father of the petitioners herein, in respect of 6992 square yards of land in Kothapet, Guntur District. Subsequently the same was ratified by the regular Board of Trustees of Yedavallivari Choultry Trust. Pursuant thereto a registered lease deed dated 22-12-1970 was also executed for a period of 47 years with a provision for renewal, permitting the father of the petitioners for construction of a cinema theatre at the site in question.

However, by virtue of the interim orders granted by this Court in

A.S.No.120 of 1971 filed against the judgment and decree in O.S.No.7 of 1967, the father of the petitioners was restrained from entering the land in question and take up the construction. Ultimately, this Court while disposing of the appeal, confirmed the legality and sanctity of the lease deed dated 22-12-1970 and vacated the interim injunction initially granted.

Thereafter, the father of the petitioners made an application before the Collector and District Magistrate, Guntur seeking permission to construct a permanent cinema theatre on the land in question and the same was granted by proceedings dated
28-09-1974 after obtaining a clarification from the Assistant Commissioner of Endowments that there are no objections from their side to grant permission for construction of a permanent cinema theatre as the land was leased out under a registered deed. In the mean time, the land was occupied by several encroachers and the petitioners had to initiate legal proceedings to evict them. While so, in the year 1994, it came to the knowledge of the petitioners that some persons were trying to take possession of the land in question through the second respondent-Assistant Commissioner of Endowments. In the circumstances, the petitioners made a representation dated 24-08-1994 requesting the first respondent-Commissioner of Endowments not to grant any lease in respect of the land in question in favour of any third party. A reminder was also submitted to the first respondent on
15-07-1996. In spite of the same, the third respondent-Executive Officer, Sri Yedavallivari choultry issued the impugned notification dated 14-12-1997 inviting tenders for construction of 420 shops on monthly rental basis for a period of 30 years at the premises of the Choultry which is the subject matter of the lease in favour of the father of the petitioners.

Hence, this writ petition contending that by virtue of the registered lease deed dated 22-12-1970, the validity of which was upheld by this Court in A.S.No.120 of 1997 and which is still

subsisting, the petitioners who are the legal heirs of the original lessee acquired a right to enjoy the benefits of the said lease and that the impugned tender notification, which tantamounts to circumvent the judgment of this Court in A.S.No.120 of 1997 is arbitrary and illegal and liable to be set aside. It is further contended that since the lease is valid for a period of 47 years with a clause for further renewal, and the same is still subsisting and particularly since the lessee was granted permission for construction of a permanent cinema theatre, the respondents are estopped from granting any fresh lease in favour of third parties.

In the Counter-affidavit filed by the 3rd respondent, it is contended that as per the scheme framed in O.S.No.6 of 1967, the leasehold rights have to be granted only by way of public auction after getting prior sanction of the Court, if the lease period exceeds three years. Since no such prior sanction was obtained by the then Trustee and no public auction was conducted while granting the lease in favour of the father of the petitioners, the lease is *void abinitio* and consequently, the ratification, if any, granted by the Board of Trustees is also without any authority. It is contended that even under the provisions of Act 17 of 1966, the approval by the Endowments Department is mandatory and since no such approval was granted, the lease agreement in favour of the father of the petitioners was *null and void* and, consequently, the petitioners cannot claim to have acquired any legal rights and they were not even put in possession of the land in question. Hence the action of the respondents in issuing the impugned tender notice cannot be found fault with.

I have heard the learned counsel for both parties.

The learned counsel for the petitioners vehemently contended that even assuming that the lease in favour of petitioners' father was granted without following due process of law, in the absence of a specific provision either under the repealed A.P. Act 17 of 1966 or under Act 30 of 1987, the lease cannot be held to be null and void.

The learned counsel for the petitioners further contended that at any rate, it is not open to the respondents to raise such an objection as a defence in the writ petition filed by the lessees seeking implementation of the lease agreement.

In support of his submission, the learned counsel for the petitioners relied upon a decision of the Supreme Court in **Sultan Sadik v. Sanjay Raj Subba**[1].

However, the learned counsel appearing for the 3rd respondent-Temple has brought to the notice of the Court that during the pendency of this writ petition, it was decided by the 3rd respondent not to proceed with the impugned tender notification dated 14-12-1997 and subsequently on 16-11-2000, the Executive Officer had granted a fresh lease in favour of Guntur Kothapet Cloth Merchants Welfare Association. However, the said lease was withdrawn and aggrieved by the same, W.P.No.12938 of 2006 has been filed in which an order of *status* quo has been granted and the writ petition is still pending on the file of this court.

In view of the subsequent events and particularly since the impugned tender notice itself was withdrawn, it is not necessary for this Court to express any opinion on merits with regard to the validity of the lease granted in favour of the father of the petitioners.

It is also relevant to note that in exercise of the rule making power conferred under Section 82 of Act 30 of 1987, the Government of Andhra Pradesh has made the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and other Rights (other than Agricultural Lands) Lease and Licenses Rules, 2003 (for short “Rules 2003”), which govern the leases of immovable properties other than agricultural lands as on today. Having regard to the changed circumstances, in case the petitioners are still aggrieved, it is open for them to initiate appropriate proceedings for redressal of their grievance.

It is made clear that this Court has not expressed any opinion on the disputed question as to the possession of the land in question as on today and both the parties are at liberty to raise all the questions of fact and law in an appropriate proceeding, in case necessity thereof arises. The writ petition is accordingly dismissed as infructuous. No costs.

(G. ROHINI, J.)

25th April, 2007.
Klp/Kgr

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[1] 2004 SC 1377.